

May 18, 2007

**DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY**

Appeal

Name of Petitioner: Marty D. Davidson
Date of Filing: March 6, 2007
April 23, 2007
Case Number: TFA-0192
TFA-0201

This Decision concerns two Appeals filed by Marty D. Davidson from determinations issued to him by the Department of Energy's (DOE) Oak Ridge Office (ORO) (Case No. TFA-0192) and the DOE's National Nuclear Security Administration Service Center, Albuquerque (NNSA) (Case No. TFA-0201). In those determinations, ORO and NNSA responded to a request for documents that Mr. Davidson submitted under the Privacy Act, 5 U.S.C. § 552a, as implemented by the DOE in 10 C.F.R. Part 1008. Both ORO and NNSA located some documents responsive to Mr. Davidson's request; however, neither ORO nor NNSA located all of the requested records. This appeal, if granted, would require ORO and NNSA to perform additional searches and release any newly discovered responsive documents or issue a new determination justifying the withholding of those documents.

I. Background

Mr. Davidson filed a request under the Privacy Act with ORO for records pertaining to his employment at DOE's Oak Ridge Site. *See* Letter from ORO to Marty D. Davidson (January 29, 2007). Specifically, Mr. Davidson requested copies of his "medical records, personnel records, radiation exposure records, chest x-rays, training records, industrial hygiene records, personnel security file, and OPM background investigation." *Id.* In its final response, ORO provided Mr. Davidson with some records but informed him that "no medical records, personnel records, chest x-rays, training records or industrial hygiene records were found." *Id.* ORO also stated that no personnel security file or OPM background investigation records were located because they were destroyed pursuant to the timelines in the National Archives and Records Administration General Records Schedules. *Id.* Finally, ORO stated that it forwarded Mr. Davidson's Privacy Act request to NNSA because NNSA now has jurisdiction over records located at one of the DOE's facilities at Oak Ridge, the Y-12 site. *Id.*; *see also* Letter from ORO to Marty D. Davidson

(March 24, 2006). In its response, NNSA stated that it contacted the Y-12 Site Office to request a search for records. *See* Letter from NNSA to Marty Davidson (May 31, 2006). NNSA stated that, although it located some responsive records and provided copies of those records to Mr. Davidson, it could not locate all of the requested records. *Id.*

Mr. Davidson filed the present appeals challenging the adequacy of the searches performed by ORO and NNSA. Letters from Marty D. Davidson to OHA (March 6, 2007 and April 23, 2007) (Appeal Letters). In his appeals, Mr. Davidson contends that his records must exist because he had various exposures to radiation and underwent several medical procedures that he knows were documented. *Id.*

II. Analysis

Under the Privacy Act, each federal agency must permit an individual access to information pertaining to him or her which is contained in any system of records maintained by the agency. 5 U.S.C. § 552a(d). Unlike the Freedom of Information Act (FOIA), which requires an agency to search all of its records, the Privacy Act requires only that the agency search systems of records. However, we require a search for relevant records under the Privacy Act to be conducted with the same rigor that we require for searches under the FOIA. *See, e.g., Carla Mink*, 28 DOE ¶ 80,251 (2002). Accordingly, in analyzing the adequacy of the searches conducted by ORO and NNSA in this case, we are guided by the principles we have applied in similar cases under the FOIA.

In responding to a request for information filed under the FOIA, it is well established that an agency must “conduct a search reasonably calculated to uncover all relevant documents.” *Truitt v. Department of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). “The standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials.” *Miller v. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Doris M. Harthun*, 28 DOE ¶ 80,282 (2003).

In reviewing this appeal, we contacted both ORO and NNSA to discuss the searches conducted in response to Mr. Davidson’s requests.

ORO informed us that it “conducted a search of the K25 site, Oak Ridge Associated Universities, the DOE Records Holding Area (legacy records), the Oak Ridge National Laboratory, and the DOE Personnel Security Clearance Division.” E-mail from Amy Rothrock, ORO, to Diane DeMoura, OHA (April 24, 2007). ORO stated that it searched those sites for “medical records, personnel records, radiation exposure records, chest x-rays, training records and industrial hygiene records” using Mr. Davidson’s “social security number, name, date of birth and badge number.” E-mail from Leah Ann Schmidlin, ORO, to Diane DeMoura, OHA (May 10, 2007). ORO stated that the only records it was able to locate were “18 pages of radiation exposure records found at the K25 site in a shared database containing radiation exposure records of employees from several sites, not just K25.” *Id.* ORO added that Mr. Davidson “was a RUST

Engineering employee which indicated that Y-12 would have the majority of his records, if not all, based on our past experience in locating RUST employee records at Y-12.” *Id.*

NNSA informed us that, in responding to Mr. Davidson’s request, it searched for records in several databases using Mr. Davidson’s name, social security number, date of birth, and badge number. E-mail from Terry Apodaca, NNSA, to Diane DeMoura, OHA (April 30, 2007). According to NNSA, the databases include “Plant Records, Personnel, Medical, Industrial Hygiene and Radcon (radiation contamination)” and contain all references to any paper copies of records that the site has. E-mail from Terry Apodaca, NNSA, to Diane DeMoura, OHA (April 25, 2007). According to NNSA, it located, and provided to Mr. Davidson, all records it located including 20 pages of Personnel records, 22 pages of Medical records, and 12 pages of Radcon records. *Id.* NNSA noted that since Mr. Davidson was a RUST Engineering employee, and not employed by Y-12, “the balance of his records would be at the company that he was employed.” *Id.* NNSA added that it has had “several subcontractors that have worked at [Y-12] during the years, but those companies maintain [their] own records.” *Id.* NNSA stated that it provided all the records it could find and that Mr. Davidson should contact RUST Engineering to request additional records. *Id.*

Based on this information, we find that ORO and NNSA performed extensive searches reasonably calculated to reveal records responsive to Mr. Davidson’s request. The searches were, therefore, adequate. Accordingly, Mr. Davidson’s appeals should be denied.

It Is Therefore Ordered That:

(1) The Appeals filed on March 6, 2007 and April 23, 2007, by Marty D. Davidson, OHA Case Nos. TFA-0192 and TFA-0201, are hereby denied.

(2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552a(g)(1). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

William M. Schwartz
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Office of Hearings and Appeals

Date: May 18, 2007